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SENATE BILL 779

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

John Arthur Smith

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; PROVIDING FOR EXPANDED
INVESTMENT OBJECTIVES OF THE STATE INVESTMENT OFFICER.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-27-5.15 NMSA 1978 (being Laws 1990,
Chapter 126, Section 5, as amended by Laws 2001, Chapter 238,
Section 1 and by Laws 2001, Chapter 252, Section 10) is amended
to read:

"7-27-5.15. NEW MEXICO PRIVATE EQUITY [~~FUND~~] FUNDS AND
[~~SMALL~~] BUSINESS INVESTMENTS. --

A. No more than [~~three~~] eight percent of the market
value of the severance tax permanent fund may be invested in
New Mexico private equity funds or New Mexico businesses under
this section.

~~[B. If an investment is made under Subsection A of~~

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1 ~~this section, not more than fifteen million dollars~~
2 ~~(15,000,000) of the amount authorized for investment pursuant~~
3 ~~to Subsection A of this section shall be invested in any one~~
4 ~~New Mexico private equity fund.] The amount invested in any~~
5 one New Mexico private equity fund shall not exceed [fifty]
6 sixty percent of the committed capital of that [fund]
7 investment.

8 [C.] B. In making investments pursuant to
9 Subsection A of this section, the council shall [give
10 ~~consideration to~~] make investments in New Mexico private equity
11 funds or New Mexico businesses whose investments or enterprises
12 enhance the economic development objectives of the state.

13 [D.] C. The state investment officer shall make
14 investments pursuant to Subsection A of this section only upon
15 approval of the council and upon review of the recommendation
16 of the private equity investment advisory committee. [The
17 ~~state investment officer is authorized to make investments in a~~
18 ~~New Mexico private equity fund pursuant to Subsection A of this~~
19 ~~section contingent upon a New Mexico private equity fund~~
20 ~~securing paid-in investments from other accredited investors~~
21 ~~for the balance of the minimum committed capital of the fund.~~

22 E.] D. As used in this section:

23 [(1) ~~"committed capital" means the sum of the~~
24 ~~fixed amounts of money that accredited investors have obligated~~
25 ~~for investment in a New Mexico private equity fund and which~~

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1 ~~fixed amounts may be invested in that fund on one or more~~
2 ~~payments over time; and]~~

3 (1) "New Mexico business" means, in the case
4 of a corporation or limited liability company, a business with
5 its principal office and a majority of its full-time employees
6 located in New Mexico or, in the case of a limited partnership,
7 a business with its principal place of business and eighty
8 percent of its assets located in New Mexico;

9 (2) "New Mexico-only private equity fund"
10 means a New Mexico private equity fund that invests only in New
11 Mexico businesses pursuant to this section; and

12 ~~[-(2)]~~ (3) "New Mexico private equity fund"
13 means [any] a limited partnership, limited liability company or
14 corporation organized and operating in the United States and
15 maintaining an office staffed by a full-time investment officer
16 in New Mexico that:

17 (a) has as its primary business activity
18 the investment of funds in return for equity in or debt of
19 businesses for the purpose of providing capital for start-up,
20 expansion, product or market development, recapitalization or
21 similar business purposes;

22 (b) holds out the prospects for capital
23 appreciation from such investments;

24 ~~[(c) has a minimum committed capital of~~
25 ~~fifteen million dollars (\$15,000,000);~~

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1 ~~(d)~~ (c) has at least one full-time
2 manager with at least three years of professional experience in
3 assessing the growth prospects of businesses or evaluating
4 business plans and who has established permanent residency in
5 the state;

6 ~~(e)~~ (d) is committed to investing or
7 helps secure investing by others, in an amount at least equal
8 to the total investment made by the state investment officer in
9 that fund pursuant to this section, in businesses with a
10 principal place of business in the state and that hold promise
11 for attracting additional capital from individual or
12 institutional investors nationwide for businesses in the state;
13 and

14 ~~(f)~~ (e) accepts investments only from
15 accredited investors as that term is defined in Section 2 of
16 the federal Securities Act of 1933, as amended, (15 ~~U.S.C.~~
17 USCA Section 77(b)) and rules and regulations promulgated
18 pursuant to that section.

19 E. The state investment officer is authorized to
20 make investments in New Mexico businesses to create new job
21 opportunities and to support new, emerging or expanding
22 businesses in a manner consistent with the constitution of New
23 Mexico if:

24 (1) the investments are made in conjunction
25 with cooperative investment agreements with parties that have

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1 demonstrated abilities and relationships in making investments
2 in new, emerging or expanding businesses;

3 (2) an investment in any one business does not
4 exceed ten percent of the amount available for investment
5 pursuant to this section; and

6 (3) the investments represent no more than
7 forty-nine percent of the total investment capital in a
8 business.

9 F. The state investment officer shall make a
10 commitment to the small business investment corporation
11 pursuant to the Small Business Investment Act to invest one-
12 fourth [~~of one~~] percent of the market value of the severance
13 tax permanent fund by July 1, 2001 to create new job
14 opportunities by providing capital for land, buildings or
15 infrastructure for facilities to support new or expanding
16 businesses [~~If invested capital in the small business~~
17 ~~investment corporation should at any time fall below one-fourth~~
18 ~~of one percent of the market value of the severance tax~~
19 ~~permanent fund] and to otherwise make investments to create new
20 job opportunities to support new or expanding businesses in a
21 manner consistent with the constitution of New Mexico. On July
22 1, 2003 and on each July 1 thereafter, the state investment
23 officer shall determine whether the invested capital in the
24 small business investment corporation is less than one-fourth
25 percent of the market value of the severance tax permanent~~

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1 fund. If the invested capital in the small business investment
2 corporation equals less than one-fourth percent of the market
3 value of the severance tax permanent fund, further commitments
4 shall be made until the invested capital is equal to one-fourth
5 [of one] percent of the market value of the fund. [As used in
6 this subsection, "invested capital" means the original capital
7 contributed less any return of cost by the private equity
8 funds.]

9 G. The state investment officer shall report
10 semiannually on the New Mexico private equity investments made
11 pursuant to this section. Annually, a report shall be
12 submitted to the legislature prior to the beginning of each
13 regular legislative session and a second report no later than
14 October 1 each year to the legislative finance committee, the
15 revenue stabilization and tax policy committee and any other
16 appropriate interim committee. Each report shall provide the
17 amounts invested in each New Mexico private equity fund, as
18 well as information about the objectives of the funds, the
19 companies in which each fund is invested and how each
20 investment enhances the economic development objectives of the
21 state. Each report shall provide the amounts invested in each
22 New Mexico business."